

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

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REPLY COMMENTS OF
THE INMATE CALLING SERVICES PROVIDERS TASK FORCE

The Inmate Calling Services Providers Task Force ("ICSPTF") submits these Reply Comments in response to comments filed regarding the rate ceiling proposal of the American Public Communications Council, the Competitive Telecommunications Association, several local exchange carriers ("LECs") and competitive access providers ("CAPs") (the "Coalition").¹

The ICSPTF is comprised of members who are providers of specialized inmate-only calling systems and related services. ICSPTF's members -- all of whom compete with each other on a daily basis -- range from large, publicly-traded corporations, to small, privately-held concerns. They have years of experience in developing, maintaining and operating effective and secure inmate calling systems for facilities ranging in size from small county jails to large penal institutions.

None of the comments, with one exception addressed below, even discuss the applicability of the Coalition's proposal to inmate calling systems. This clearly indicates that the Coalition's rate ceiling proposal is designed solely for the payphone and hospitality markets, and would not be applicable to

¹ The LECs in the Coalition are Bell Atlantic, NYNEX, and BellSouth and US West, and the CAPs are MFS Communications and Teleport Communications Group.

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inmate calling services. The inmate calling services market is unique and presents policy considerations that are different from the considerations applicable to other markets. The Commission has recognized the need to treat inmate calling services differently in other contexts; there is no reason why it should not do likewise here. See, Policies Concerning Operator Service Providers, 6 FCC Rcd 2744, 2752 (1991), Indeed, the Commission recently sought comment on its current regulatory treatment of inmate-only phones, see, Operator Service Providers and Call Aggregators, CC Docket 94-158, FCC 94-352 (Feb. 8, 1995), and the comments that were filed in that proceeding strongly demonstrate that the Commission's unique treatment of inmate calling service is warranted and in the public interest.

Gateway Technologies, Inc. ("Gateway") is the only party that exhibited some confusion as to whether the Coalition's proposal applies to inmate services. Gateway explained why, in seven pages of its comments, inmate services should not be included. ICSPTF agrees. The Coalition's proposal does not address inmate calling services.²

While the Coalition's proposal does not apply to inmate services, the Commission has before it a separate rate benchmark proposal that has been specifically designed to address the unique needs of the inmate calling services market. See, ICSPTF ex parte letter, dated February 21, 1995, submitted in CC Dkts.

² For that reason, and because a separate rate ceiling proposal for inmate calls is pending (see discussion below), ICSPTF did not file comments.

Nos. 92-77 and 94-158. ICSPTF advanced this proposal as a means to assist the Commission in its efforts to stop those inmate calling services providers who may be charging rates that appear to be unreasonable and unjust. ICSPTF encourages the Commission to move forward and adopt this proposal as a cost-effective alternative to BPP.

In its comments, Gateway takes issue with ICSPTF's recognition that a "safe harbor" is necessary in light of the differing cost structures of inmate calling services providers. Gateway would have any rate ceiling be tied to dominant carrier rates -- the rates that Gateway, quite conveniently, announces that it is able to charge in the specific market segment it chooses to address and with the particular level of service it is willing to provide.

Gateway's approach is flawed. The purpose of a rate ceiling is not, as Gateway would have it, to dictate the terms of competition, mandate specifics levels of service, or otherwise give any particular company a marketplace advantage over others by tailoring the rate ceiling to the cost structure or marketing plans of a particular company. It is to establish a level above which rates are presumed to be unreasonable and unjust. The Commission's mandate under the Communications Act is to prevent such charges, not to prescribe the terms of competition or to prefer the services of one provider over another.

ICSPTF was sensitive to these concerns when it formulated its rate benchmark proposal. Many of ICSPTF's members provide

services which allow them to utilize rate structures similar to Gateway's;³ others provide more specialized offerings and/or services to smaller facilities or other institutions which can ultimately increase their costs and necessitate somewhat higher rates for cost recovery. The "safe harbor" is designed to ensure maximum competition and flexibility of offerings in the inmate calling market. At the same time it provides the Commission with an effective tool to prevent unreasonable rates. The Commission should not, however, allow a rate ceiling to be used to foreclose competition and provide a marketplace advantage for any particular company.

Respectfully submitted,

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³ Contrary to Gateway's suggestion, there is no indication that these providers will increase their rates to the maximum level within the benchmark. There is no reason competition among providers, including competition in rates, cannot flourish under the rate ceiling.